



December 18, 2000

Ms. Barbara G. Heptig
Assistant City Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2000-4726

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142336.

The City of Arlington (the "city") received a request for a copy of an internal affairs investigation in which the requestor was the subject of a citizen complaint and a copy of the written statement or citizen complaint alleging misconduct. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The submitted information appears to be a completed investigation. However, you have asserted section 552.101 which is other law that makes the information confidential.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Common law privacy excepts from disclosure private facts about an individual. *Id.* Information may be withheld from the public when (1) it is highly intimate

and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

After reviewing the submitted information, we conclude that the identities of high school students who alleged inappropriate touching should be withheld under section 552.101 in conjunction with common law privacy. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.-- El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); *see also* Open Records Decision No. 339 at 3 (1982) (identity of sexual assault victim protected by common law privacy). However, there is a legitimate public interest in how a public employee conducts himself while on-duty and how he performs his job functions. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, we conclude that the identifying information of the high school students who made the allegations is protected by section 552.101 and common law privacy but the remaining information may not be withheld under section 552.101 in conjunction with common law privacy. We have marked the identifying information that you must withhold.

We note that the submitted information contains a driver's license number. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the marked driver's license number under section 552.130(a) of the Government Code.

We also note that the submitted information contains polygraph results. Section 552.101 of the Government Code also excepts information excepted by statute. Section 1703.306 of the Occupations Code governs the release of polygraph information and provides in pertinent part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) *the examinee* or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The board or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occupations Code § 1703.306(a), (b) (emphasis added). Although this provision prohibits the release of polygraph information to anyone other than those individuals listed in subsection (a), in this instance, the examinee/requestor has a statutory right of access to the polygraph information pursuant to section 1703.306(a)(1) of the Occupations Code. Consequently, the department may not withhold the polygraph information from the requestor.

In conclusion, you must withhold the identifying information of the students who made the allegations under section 552.101 in conjunction with common law privacy. Further, you must withhold the marked driver's license number under section 552.130. You must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB\er

Ref: ID# 142336

Encl: Submitted documents

cc: Mr. Randle Meadows
1801 W. Park Row Drive
Arlington, Texas 76013
(w/o enclosures)